

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEFFREY LEN WRIGHT,

Petitioner

CASE NO. 2:06-cv-344

JUDGE SMITH

MAGISTRATE JUDGE ABEL

JAMES ERWIN, Warden,

Respondent.

ORDER

Petitioner, a state prisoner, brings the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. On June 1, 2006, respondent filed a motion to dismiss petitioner's habeas corpus petition as unexhausted. Doc. No. 4. According to the respondent, although the state trial court denied petitioner's petition for post conviction relief on August 24, 2005, petitioner still may file a timely appeal of that decision, because the Clerk of the Clermont County Court failed to properly notice petitioner of the trial court's decision, and therefore time to file an appeal has not yet commenced under Ohio law. *See Return of Writ*, at 3. Additionally, it does not appear that the statute of limitations has yet begun to run. On May 3, 2006, the Ohio Supreme Court remanded petitioner's case to the trial court for re-sentencing consistent with *State v. Foster*, 109 Ohio St. 1 (2006). Exhibit 10 to Return of Writ. In view of the foregoing, petitioner also has now requested dismissal of his habeas corpus petition without prejudice, so that he may seek an appeal of the trial court's August 24, 2005, decision denying his post conviction petition, and so that he may potentially raise further claims related to the trial court's re-sentencing upon remand. *See Traverse*.

For all of the foregoing reasons, respondent's motion to dismiss, Doc. No. 4, and petitioner's request for a dismissal without prejudice on grounds of exhaustion, Doc. No. 5, are **GRANTED**.

This action is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH

United States District Judge